TABLE OF CONTENTS

SH 2425342 / FO 2425350

Volume 2 OF 2

TABLE OF CONTENTS

SH 2425342 / FO 2425350

Volume 1 of 2

- Deputy Charles Darensbourg (IAB interview)
- Sergeant Jason Bowley (IAB and Homicide interviews)

Civilian Witnesses

- [redacted] (IAB and Homicide interviews)
- [redacted] (Homicide interview)
- [redacted] (Homicide interview)



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
JOHN K. SPILLANE • Chief Deputy District Attorney
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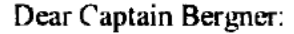
SCOTT K. GOODWIN • Director

September 20, 2017

CONTENTS NOTED CAPT. C. BERGNER

Captain Christopher Bergner
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Officer Involved Shooting of Zelalem Ewnetu
J.S.I.D. File #17-0183
L.A.S.D. File #017-05737-2176-013



Dear Captain Bergner:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the April 12, 2017, fatal shooting of Zelalem Ewnetu by members of the Los Angeles County Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

SHANNON PRESBY
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Shane Lattuca, #[redacted]
Deputy Timothy Gannon, #[redacted]

MEMORANDUM

TO: CAPTAIN CHRISTOPHER BERGNER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Zelalem Ewnetu
J.S.I.D. File #17-0183
L.A.S.D. File #017-05737-2176-013

DATE: September 20, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the April 12, 2017, fatal shooting of Zelalem Ewnetu by Los Angeles County Sheriff's Department (LASD) Deputies Shane Lattuca and Timothy Gannon. We find that the deputies acted in lawful self-defense and defense of another.

The District Attorney's Command Center was notified of this shooting on April 12, 2017, at 1:07 a.m. The District Attorney Response Team responded to the scene and was given a briefing and walk-through by LASD Lieutenant Joe Mendoza.

The following analysis is based on reports prepared by the LASD Homicide Bureau submitted to this office by Detectives Michael Valento and John Duncan. The reports include photographs, audio-recorded interviews of witnesses, surveillance videotape, and radio transmissions.

FACTUAL ANALYSIS

The 9-1-1 Call

On April 12, 2017, at 12:54 a.m., a 9-1-1 caller reported a suspected automobile burglary in progress in front of the caller's residence.

A frame from a surveillance videotape showing the suspected burglar is shown below:



The Deputies Respond

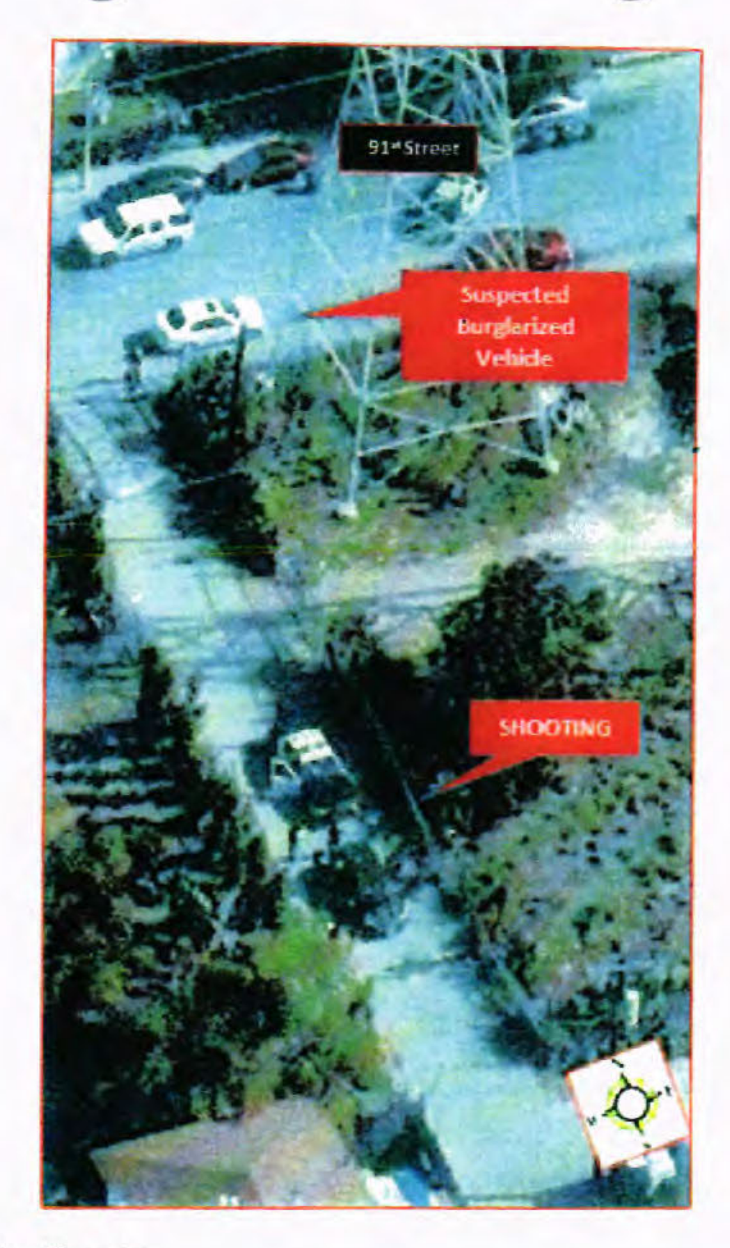
Deputies Shane Lattuca and Timothy Gannon responded to the 9-1-1 call and saw an unoccupied white Honda automobile with the trunk open, which was consistent with the report of a possible automobile burglary in progress.

At the same time, the deputies noticed a black sedan parked in an adjacent alley. The vehicle was running and the brake lights were illuminated. Believing that the black sedan might be connected with the reported automobile burglary, Lattuca and Gannon drove down the alley, parked behind the black sedan, and exited their patrol car to investigate further.[1]

Gannon approached on the driver's side of the vehicle and Lattuca approached on the passenger side.

The positions of the involved vehicles are shown in the aerial photograph below:

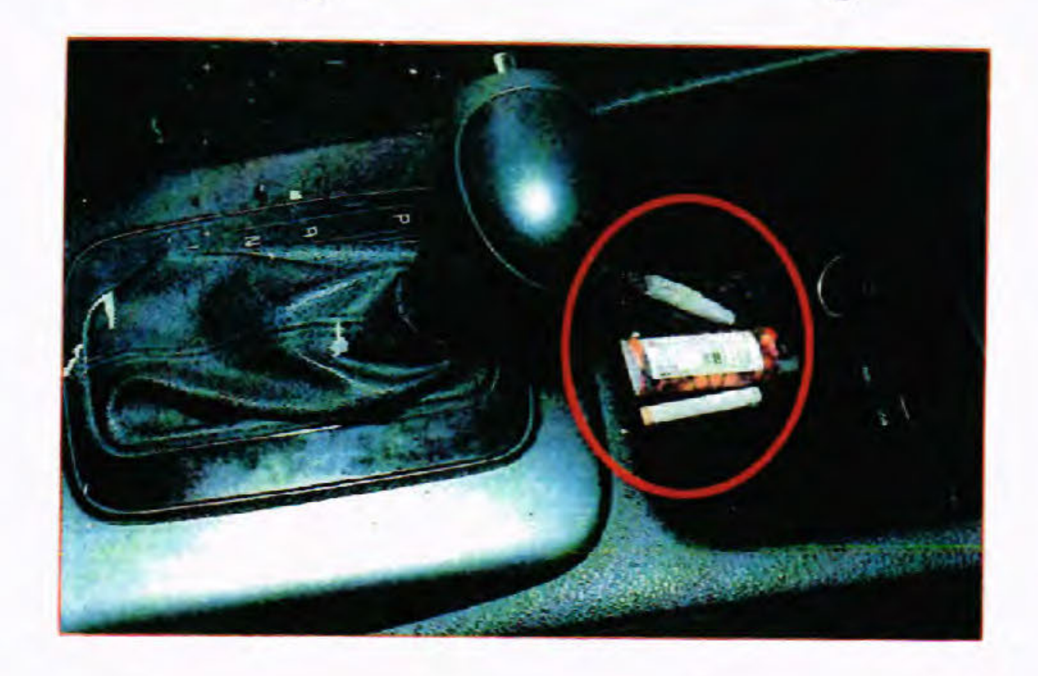
[1] The subsequent investigation did not reveal any evidence that Ewnetu was involved in a burglary.



Contact with Zelalem Ewnetu

Gannon contacted the driver of the black sedan, who was later identified as Zelalem Ewnetu, through the driver's side window. Lattuca observed from the passenger side of the vehicle. The deputies smelled marijuana emitting from the vehicle as they approached.

Investigators later located three containers of marijuana in the center console of Ewnetu's vehicle. Two of the containers were labeled "medical cannabis" and labeled with the strains "Pure" and "Kill." The third container was unlabeled. A "pre-rolled" marijuana cigarette labeled "Caviar Gold" was also located in a container in the vehicle, and a partially burned marijuana cigarette and a lighter were also found near the gearshift. Photographs of those items are shown below:





Gannon conversed with Ewnetu, who was upset with the deputies for contacting him. Ewnetu used profanity, was speaking "nonsensically" at times, was "talking with his hands," and would not place his hands on the steering wheel as ordered. Gannon explained that the deputies were contacting him because he was parked illegally, blocking an alley, and they were investigating a burglary in the area. Gannon also explained that Ewnetu could not smoke marijuana in a vehicle. Ewnetu said he could smoke marijuana "where [he] wanted."

Gannon ordered Ewnetu to exit the vehicle so he could further investigate Ewnetu's use of marijuana while in the car. *See Vehicle Code section 23152(a).*

The Shooting

Lattuca, who was observing Ewnetu through the partially open passenger side window, reached into the vehicle to unlock the passenger side door. In response, Ewnetu rolled up the window and pinned Lattuca's arm between the window and the door frame. Lattuca was able to free his arm and unlock and open the door. He reached into the vehicle, turned off the car, and pulled the keys out of the ignition.

Gannon opened Ewnetu's door and placed his hand on Ewnetu's forearm to guide him out of the vehicle.

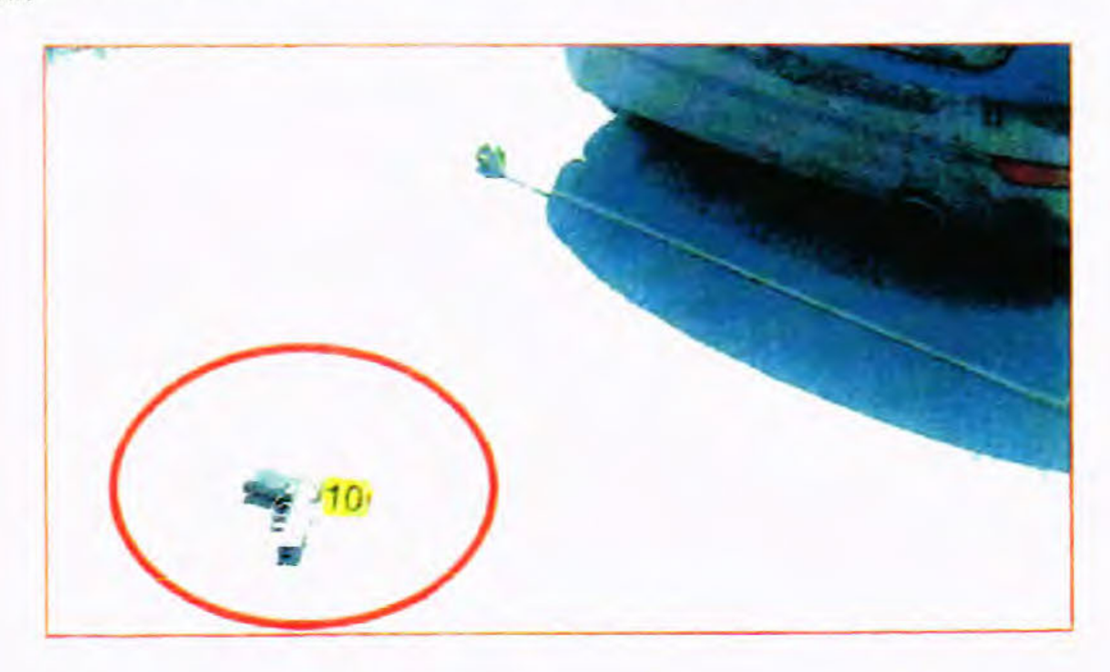
Ewnetu suddenly twisted his upper body to the right, reached into the backseat, produced a loaded .40 caliber semiautomatic pistol, and appeared to "rack" it (i.e. he attempted to pull the slide of the gun back to load a round in the chamber). Lattuca screamed to his partner, "Gun! Gun! Gun!"

Fearing that Ewnetu was going to shoot him or Gannon, Lattuca drew his service weapon and fired at Ewnetu.

Despite being struck with several rounds, Ewnetu was able to exit the vehicle and point the gun at Gannon, who was retreating and seeking cover toward the back of Ewnetu's vehicle.

Gannon also fired at Ewnetu, as Lattuca fired a second volley of rounds. Ewnetu dropped his gun and fell to the ground near his open driver's side door and died at the scene.

Gannon approached Ewnetu, who was lying face down and with his hands concealed underneath his body near his waistband. Gannon kicked Ewnetu's gun away from him, for officer safety purposes. Ewnetu's gun as it was recovered behind his vehicle is circled in red in the photograph below:



Statement of Deputy Shane Lattuca

Deputy Lattuca provided a voluntary statement to investigators.

Lattuca was on patrol with his partner, Gannon, when they responded to a radio call of an automobile burglary near the intersection of 91st Street and Compton Avenue. Lattuca and Gannon were in uniform and in a marked black and white patrol vehicle. Gannon was driving.

They arrived in the area less than five minutes after receiving the radio call. Lattuca and Gannon saw a white Honda automobile with the trunk open, which was suspicious, so they stopped to investigate. As they did so, Lattuca and Gannon saw a black sedan stopped in an adjacent darkened alley, and the taillights of that vehicle were on. That drew their attention and they decided to investigate further to see if the black sedan was involved in the reported burglary.

Lattuca exited the patrol car and Gannon followed behind. As Lattuca approached the passenger side of the black sedan, he could not see into the vehicle because the windows were tinted. He drew his service weapon, a 9mm semiautomatic pistol, and illuminated the vehicle with his flashlight. The front, passenger side window was partially down and the vehicle was running. Lattuca could see Ewnetu in the driver's seat through the open passenger side window. Lattuca smelled marijuana emitting from the vehicle.

Ewnetu did not appear initially to be aware of the deputies' presence, and may have been looking at his cellular telephone. No one else was inside the vehicle. Ewnetu eventually noticed Lattuca and said, "Why are you stopping me?" For his protection, Lattuca ordered Ewnetu to roll down the windows and place his hands on the steering wheel. At that point, Ewnetu had both hands on his cellular telephone. Ewnetu was not complying with Lattuca's orders and kept asking, "Why? Why?" Lattuca told him to "relax" and put his hands on the steering wheel. Ewnetu refused and continued to use his telephone.

By that time, Gannon had approached the vehicle on the driver's side and illuminated Ewnetu with his flashlight. When Ewnetu directed his attention to Gannon, Lattuca holstered his service weapon and, using his right hand, reached through the open passenger side window to unlock the door. Ewnetu, using a power window switch in the vehicle, rolled up the passenger side window and trapped Lattuca's arm between the window and the door frame, which caused Lattuca pain. Lattuca was able to twist and pull hard on his arm to yank it free, and he then used his left hand to open the unlocked door using the handle on the outside of the vehicle. As he did so, Ewnetu repeated, "Why are you stopping me? I haven't done anything wrong."

Ewnetu dropped his telephone and moved his right hand toward the center console and the gearshift, which was in the "park" position. Lattuca feared that Ewnetu was attempting to shift the car into gear and drive away, with Lattuca still standing in the open passenger side door of the vehicle.

While Ewnetu's attention was drawn to Gannon, Lattuca reached into the vehicle and took the keys out of the ignition and placed them on the roof of the car.

Gannon conversed with Ewnetu to explain the reason for the deputies contacting him. Gannon said they were investigating a burglary and they also smelled marijuana coming from Ewnetu's

vehicle. Ewnetu explained that it was legal to smoke marijuana. Gannon responded that it was not necessarily legal to do so inside a vehicle. Ewnetu was extremely agitated. Gannon ordered Ewnetu to exit the vehicle.

Ewnetu initially placed both hands toward the driver's side door panel as if to get out of the vehicle, but then suddenly twisted his upper body clockwise, and reached rapidly with both hands through the center console area toward the back seat.

Based on the totality of the circumstances to that point, including Ewnetu's unusual behavior, non-compliance with their orders, and movements, Lattuca believed that Ewnetu was reaching into the back seat to retrieve a firearm.

Lattuca drew his service weapon and told Ewnetu, "Show me your hands."

Ewnetu did not comply and instead produced a black semiautomatic handgun from the back seat, held it in his right hand as if he was going to fire it, and used his left hand to pull the slide back on the gun to "rack" a round. Lattuca believed that Ewnetu was going to kill him or his partner. Lattuca screamed, "Gun! Gun! Gun!" to warn Gannon. Gannon stepped back, and Lattuca fired four to six rounds at Ewnetu.

Ewnetu turned to his left as if to get out of the vehicle or turn the gun on Gannon. Lattuca walked backward toward the patrol vehicle in order to get cover and gain a more advantageous position. Gannon was to Lattuca's left, abreast of him, and also walking backward.

Lattuca lost sight of Ewnetu momentarily but then saw him emerge from the open, driver's side door and stand up. Lattuca heard Gannon fire two or three rounds at Ewnetu at that point.

Lattuca did not know if Ewnetu fired any rounds.

Ewnetu exited the vehicle, took a shooting stance, and pointed the gun at Gannon. Fearing that Ewnetu was going to shoot and kill Gannon, Lattuca fired four or five more rounds at Ewnetu through the back of Ewnetu's vehicle. Ewnetu fell to the ground, face down with both hands under his body near his waistband, and continued to move. Ewnetu's gun landed next to his body.

Lattuca ordered Ewnetu to show his hands but he kept moving for approximately one minute. Lattuca thought that Ewnetu could be reaching for another gun.

Gannon approached Ewnetu and used his boot to kick Ewnetu's gun a safe distance away.

Lattuca called for help, and backup units arrived and formulated a plan to approach Ewnetu.

Believing that Ewnetu could still be armed and might attempt to retrieve a second gun, a supervisor authorized another deputy to use a less lethal stun bag on Ewnetu in order to gain his compliance. That deputy fired two stun bag rounds at Ewnetu. The rounds struck Ewnetu in the back but he did not respond. It appeared at that point that Ewnetu was incapacitated, so an arrest team approached.

The fire department was called to render medical assistance to Ewnetu.

Statement of Deputy Timothy Gannon

Deputy Gannon provided a voluntary statement to investigators.

Gannon was on patrol with Lattuca when they responded to a radio call of an automobile burglary. When they arrived in the area of the call, Gannon and Lattuca saw a vehicle with the trunk open, which seemed suspicious and was consistent with a possible burglary. They looked down an adjacent alley, which was very dark, and saw a black sedan parked with the brake lights illuminated. Gannon drove the patrol vehicle down the alley and stopped behind the black sedan to investigate whether it may have been involved in the burglary. Gannon illuminated the vehicle with his spotlight and exited the vehicle with Lattuca. Since they were investigating a burglary, were in an area known for a high incidence of crime and gang activity, were in a dark alley, and were approaching a suspicious vehicle that they could not see into, Gannon drew his service weapon.

The doors of the black sedan were closed and they could not see into the vehicle because of the dark tint on the windows. Gannon approached on the driver's side and Lattuca approached on the passenger side. Gannon could smell marijuana emitting from the vehicle. He tapped on the driver's side window with his flashlight and Ewnetu rolled the window down. A plume of marijuana smoke emitted from the interior of the vehicle. No one else was in the car. Gannon asked Ewnetu what he was doing there, and told Ewnetu that he was parked illegally and blocking the alley. He also informed Ewnetu that it was illegal to smoke marijuana in a vehicle. Ewnetu said he could smoke marijuana wherever he wanted and it was his "prerogative" to be there. Gannon asked Ewnetu to roll his window all of the way down. Ewnetu was very upset and bothered that the deputies were contacting him, was making furtive movements, was "talking with his hands," and was yelling "nonsensically" and using profanity.

Ewnetu eventually rolled his window down more and then unlocked his door. Gannon opened the door and informed Ewnetu that he was being detained for investigation of smoking marijuana in the vehicle and not wearing a seatbelt. Gannon asked Ewnetu to step out of the car.

Ewnetu was agitated, but was not overtly aggressive at that point. Gannon put his arm on Ewnetu's forearm to guide him out of the vehicle. Ewnetu immediately pulled his arm away from Gannon, twisted his body in a clockwise direction, and reached toward the back seat with his right hand. Gannon heard Lattuca yell, "Gun!"

Gannon walked backward and heard Lattuca fire. He saw the muzzle of Ewnetu's gun come above the steering wheel and out the driver's side door. In fear for his life, Gannon moved toward the rear of the vehicle and fired two to three rounds at Ewnetu. Ewnetu exited the vehicle and fell to the ground. Gannon was unsure if Lattuca fired again. Gannon retreated to behind his patrol car, advised Lattuca to radio for backup, and continued to give Ewnetu verbal commands to show his hands, while holding him at gunpoint.

Ewnetu appeared to be hit with the gunfire, was face down, and his hands were underneath him. The gun was on the ground next to him. Gannon approached and kicked the gun a safe distance away.

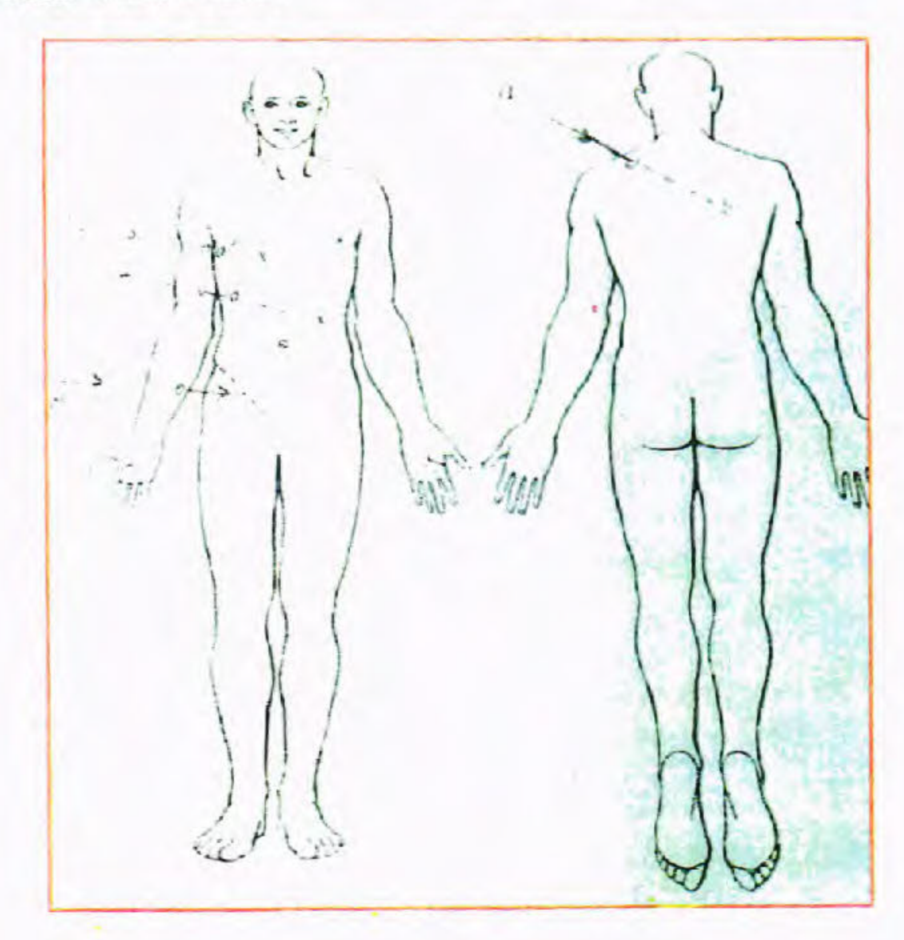
Backup units arrived and another deputy fired stun bag rounds at Ewnetu, believing that he could still be alive and attempting to retrieve another gun. An arrest team eventually approached and performed CPR on Ewnetu.

Statement of [redacted]

[redacted] is a [redacted] of Ewnetu. He told investigators he was aware of the shooting and was in disbelief as to what transpired. Ewnetu was a mechanical and nuclear engineer and his alleged actions were out of character for him. [redacted] was also shocked to learn that Ewnetu had a handgun in his possession, and never knew him to possess any firearm.

Autopsy

On April 16, 2017, Deputy Medical Examiner Ogbonna Chinwah, M.D. of the Los Angeles County Medical Examiner's Office conducted an autopsy of Ewnetu's remains. He concluded that Ewnetu was shot four times and died from multiple gunshot wounds. Three projectiles were recovered from Ewnetu's body. Two of the gunshots entered Ewnetu's right arm and were non-fatal injuries. Another gunshot entered Ewnetu's left, upper back and continued into the chest, which was a fatal injury. A gunshot also passed through Ewnetu's right arm and into his chest, which was also a fatal injury. The coroner's diagram showing the trajectory and path of the gunshot wounds is shown below:



A toxicology analysis was performed and showed the presence of THC (marijuana) in Ewnetu's blood.[2]

Firearms Evidence

Ewnetu was armed with a .40 caliber Smith and Wesson semiautomatic handgun, which was registered to him. He purchased the gun in Los Angeles on June 29, 2015.

When the gun was inspected at the scene, there was no round in the chamber, which indicates that Ewnetu may not have successfully pulled the slide back on the gun ("racked" it) to load a round into the chamber. There were ten live rounds in the magazine. Sixteen .40 caliber live rounds were located in the center console of Ewnetu's vehicle. The gun was later examined forensically and determined to be functional.

A zippered storage case for the pistol was located in Ewnetu's glovebox. The case was not locked but it had a padlock attached. A key for the pouch was on the same keychain with the key to Ewnetu's vehicle.

There is no evidence that Ewnetu fired his gun during the incident.

A photograph of Ewnetu's firearm, after it was rendered safe by investigators, is shown below:



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[2] Ewnetu had 12 ng/mL of Delta 9-Tetrahydrocannabinol (THC) in his blood at the time of the autopsy. For reference, and to provide context to the meaning of THC levels, it is notable that there is no *per se* level of THC to show driving impairment in California. However, some states prohibit driving with a THC level of 5 ng/mL or above. According to a National Highway Traffic Safety Administration panel of toxicologists, it is difficult to establish a relationship between a person's THC blood concentration and performance impairing effects and it is inadvisable to try to predict effects based on blood THC concentrations alone, and it is currently impossible to predict specific effects based on THC concentrations. The pharmacological effects of marijuana vary with dose, route of administration, experience of user, vulnerability to psychoactive effects, and setting of use. At recreational doses, the effects of THC include relaxation, euphoria, relaxed inhibitions, sense of well-being, disorientation, altered time and space perception, lack of concentration, impaired learning and memory, alterations in thought formation and expression, drowsiness, sedation, mood changes such as panic reactions and paranoia, and a more vivid sense of taste, sight, smell, and hearing. Stronger doses intensify reactions and may cause fluctuating emotions, flights of fragmentary thoughts with disturbed associations, a dulling of attention despite an illusion of heightened insight, image distortion, and psychosis. *Cooper, Fiona and Logan, Barry. 2000. U.S. Department of Transportation. National Highway Transportation Safety Administration: Drugs and Human Performance Fact Sheet, pp. 7-12.*

Gannon was armed with a 9mm Berretta semiautomatic pistol loaded with 15 rounds in the magazine and one round in the chamber. His service weapon was inspected after the shooting and there was one round in the chamber and 13 rounds in the magazine, which is consistent with him shooting twice.

Lattuca was armed with a 9mm Smith and Wesson semiautomatic pistol loaded with 17 rounds in the magazine and one round in the chamber. His service weapon was inspected after the shooting and there was one round in the chamber and six rounds in the magazine, which is consistent with Lattuca firing 11 times.

Thirteen 9mm cartridge casings were recovered around Ewnetu's vehicle.

Three projectiles were recovered from Ewnetu's body.

There were 11 areas of bullet damage to Ewnetu's vehicle, including five bullet holes in the rear window and three bullet holes to the right, rear passenger window.

Two less-lethal stun bag shot shells and bean bags were located near Ewnetu and his vehicle.

Surveillance Videotape

Surveillance videotape was recovered from a residence on 91st Street and shows an unidentified man tampering with the white Honda at 12:48 a.m. The surveillance tape also shows Ewnetu driving south on Compton Avenue and east onto 91st Street and into the alley and out of view at 1:12:12 a.m. The deputies are shown arriving 36 seconds later at 1:12:48 a.m. The shooting itself is not captured on videotape because it was off camera.

Lattuca and Gannon's patrol vehicle was not equipped with a dash camera, and Gannon and Lattuca were not equipped with body cameras or other recording devices.

A business adjacent to the shooting location, a marijuana dispensary, was equipped with surveillance cameras but they were not recording when the shooting occurred.

LEGAL ANALYSIS

The Law

California law permits the use of deadly force in self-defense or in the defense of another if that person actually and reasonably believes that he or others are in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also, CALCRIM* 505.

The test of whether the officer's actions were objectively reasonable is "highly deferential to the police officer's need to protect himself and others." *Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1102.

In sum, the United States Supreme Court has long held that, "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight...The calculus of reasonableness must embody allowance for the fact that the police are often forced to make split-second judgments - - in circumstances that are tense, uncertain, and rapidly evolving - - about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

Analysis

Ewnetu, who had the presence of THC in his bloodstream and may have been smoking marijuana when Gannon and Lattuca approached, was agitated, displayed unusual behavior. and failed to comply with the deputies' orders to "relax" and keep his hands in sight and on the steering wheel. It is evident that Ewnetu's recent use of marijuana could have affected his thought processes. His animosity and aggression toward the deputies from the outset was palpable, not only by his language and lack of compliance with the deputies' orders, but was also confirmed when he assaulted Lattuca by rolling up the window on his arm.

Then, in a rapidly unfolding sequence of events. as Gannon attempted to guide Ewnetu out of the vehicle, Ewnetu pulled away from Gannon. reached into the back seat. drew a loaded firearm, appeared to "rack" it, and pointed it in Lattuca's direction.

Lattuca, reasonably believing that Ewnetu was going to kill him and his partner, fired his service weapon at Ewnetu in lawful self-defense. and defense of another. Lattuca fired a second volley when Ewnetu pointed the gun at Gannon, who also fired at Ewnetu in self-defense and in defense of Lattuca.

CONCLUSION

Based on a review of the totality of the evidence in this case, Deputies Shane Lattuca and Timothy Gannon acted reasonably and in lawful self-defense and defense of another when Ewnetu pointed a loaded gun at them. Therefore, we are closing our file and will take no further action in this matter.